## UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA ALEXANDRIA DIVISION

PRO-FOOTBALL, INC.,	,
Plaintiff,	)
v.	) Civil Action No. 1:14-cv-1043 (GBL/IDD)
AMANDA BLACKHORSE, et al.,	)
Defendants.	)
	)

## UNITED STATES' ACKNOWLEDGMENT OF CONSTITUTIONAL CHALLENGE AND CONSENT REQUEST FOR EXTENSION OF TIME

The United States hereby acknowledges receipt of Plaintiff's notice [ECF No. 17] that its complaint draws into question the constitutionality of Section 2(a) of the Lanham Act, 15 U.S.C. § 1052(a). *See* Fed. R. Civ. P. 5.1. Neither the United States nor any federal entity is a party, and Plaintiff filed its notice in this case on September 12, 2014. Accordingly, Rule 5.1 affords the United States 60 days from that date to intervene, unless the Court sets a later date.

The United States hereby requests that the Court set a later date – specifically, that the United States be allowed to file any intervention notice on or before the close of discovery, January 9, 2014. The United States further requests that, should the United States file an intervention notice, it be permitted to coordinate its briefing responding to plaintiffs' constitutional challenge with the briefing schedule set for the parties' filing of motions for summary judgment, after the close of discovery. The parties do not object to this request.

The Solicitor General of the United States decides whether the United States should intervene to defend the constitutionality of an Act of Congress. See 28 C.F.R. § 0.21 ("The Solicitor General may in consultation with each agency or official concerned, authorize

intervention by the Government in cases involving the constitutionality of acts of Congress.").

Obtaining the Solicitor General's approval will require time for thorough consideration.

Moreover, there appears to be no need for the United States to decide whether to intervene at this time, prior to the close of discovery. Defendants have filed a motion to dismiss the case in its entirety on grounds unrelated to the constitutionality of the Lanham Act. That motion was heard on October 31, 2014. In addition, plaintiff's facial challenge to the constitutionality of the Lanham Act appears to raise purely legal questions that will not turn on the resolution of disputed adjudicative facts, so the United States will not need to participate in discovery as to that issue.

In short, because the parties will not join the question of the constitutionality of the Lanham Act until summary judgment briefing, following the close of discovery, (assuming the Court denies the motion to dismiss), there appears to be no need for the United States to make a final decision on intervention before that time. If it decides to intervene, the United States respectfully suggests that the timing of its briefing in defense of the constitutionality of the Lanham Act be coordinated with the parties' briefing schedules to reduce duplication and promote judicial economy.

For the reasons stated above, the United States therefore requests an extension of time so that it may file any intervention notice on or before the close of discovery, January 9, 2014. A proposed order to this effect has been attached for the convenience of this Court.

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Dated: November 7, 2014 Respectfully submitted,

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By: /s/
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**Counsel for United States** 

## CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of November, 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to:

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<u>Date</u>: November 7, 2014 \_\_\_\_\_/s/\_\_\_\_

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